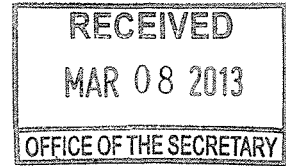


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



INVESTMENT ADVISERS ACT OF 1940
Release No. 3527/December 27, 2012

ADMINISTRATIVE PROCEEDING
FILE NO. 3-15155

In the Matter of

JEFFREY A. LISKOV

Respondent.

**BRIEF AND PARTIAL OPPOSITION OF RESPONDENT JEFFREY A. LISKOV TO
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

The respondent does not contest the Enforcement Division's ("The Division") entitlement to summary judgment and the imposition of some additional non-monetary sanctions in aid of the District Court's injunction. The respondent urges this judge to order only a bar limited to a short period of time—five years or less and to employment which involved client contact.

The respondent believes that there are at least four compelling reasons that supports his position. First, He is, as a result, of his conduct, completely financially ruined, faces civil penalties and a disgorgement order that total more than a million dollars in this case and an additional civil penalty in the companion case that the CFTC has brought of \$300,000; he has lost his business; Verizon, which had hired him as a store clerk, discharged him because of the

judgment that he had committed fraud. He has been bankrupted and he has little or no equity in his house in Plymouth, Massachusetts.

Second, the Division has been effective in publicizing its victory. Stories of the charges and the verdict have appeared in local and regional Newspapers and, at least, one national publication (Bloomberg), as well as on the Internet. Consequently, the Division has clearly achieved its objective of using this case as a deterrent. (App. A)

Third, his work experience has been, in recent years, limited to the Financial Services Industry, so that he has relatively few marketable skills for any job that will pay a substantial salary. The significant result of his limited work experience and skills means that it is highly unlikely that he ever will be able to pay any significant part of the disgorgement obligations, much less will he ever be able to pay the civil penalties. This result is not in the public interest of making the investors whole.

Fourth, and perhaps of greatest importance, the wrongful conduct, was not egregiously fraudulent, even though it involved inexcusable breaches of the duties of due care that a fiduciary owes to his clients.

ARGUMENT

The Wrongdoing That The Jury Found Does Not Merit Significant Additional Punishment.

The Respondent does not contend that the jury verdict was not supported by the evidence.

The Division's case rested on two contentions: 1. Mr. Liskov misled the five clients, Stott, Starrett, Striano, Smith, and McLaughlin, by failing to inform them of his unsuccessful track record in FOREX trading and 2. Mr. Liskov deceived Striano, Smith, and McLaughlin by

leading them to believe that had had success in FOREX trading¹. The thrust of the Division's case, however, was largely on the size of the losses that Mr. Liskov caused. As the Judge acknowledged during the charge conference, the Division tried the case much like an investor malpractice case. The focus of Ms. Bernstein's, extremely skillful argument and her demonstratives that she used during it was the gains that Mr. Liskov's trading produced and the tremendous losses that resulted from his repeated failures to capture the gains. There is no question that the jury and the judge were horrified by Mr. Liskov's gross breaches of his fiduciary responsibilities to exercise due care. The jury, allowed to ask questions, asked more than 30 questions, many expressing their reaction to the breach of his fiduciary responsibility, such as how could he reconcile his repeated investment in forex trading with the "due care" required of a fiduciary. It is clear, at least to this writer, that, as in many personal injury cases, the damage that the Respondent caused carried the liability part of the case.

Many of the undisputed facts suggest that the foregoing analysis is correct. Mrs. Stott admitted that she received from Fidelity confirmations with the admonition to call if the amount were incorrect or the withdrawal unauthorized of every withdrawal that Mr. Liskov made, and she received by e-mail at least two notifications from FXCM, the trading company, that Mr. Liskov used for every FXCM account opened, as well as for the account opened with DeutschBankFX. She claimed she didn't open the notifications from Fidelity but let them sit on

¹ 1. The Division contended, Mr. Liskov misled Fidelity and FXCM (the FOREX trading company by the use of altered documents (referred to as the "Whiteouts"), but perhaps because the evidence that Mrs. Stott received contemporaneous notifications of every withdrawal from Fidelity, as well as monthly statements that showed the withdrawals, and she received e-mails from FXCM notifying her that new trading accounts had been opened, Attorney Bernstein argued to the jury that his duties as a fiduciary required him to inform her directly and not rely on notifications from others. Trial Tr. V.9, pp. 110 – 115.

her desk for about a year and that she didn't read the e-mails from the trading companies, because Mr. Liskov told her not to do so. Her own e-mails showed that she did read the trading company e-mails. Her failures to do what Mr. Liskov expected—that she would read communications relating to her investments—suggest that he had no intent or expectation that she would be deceived. If this was the fraud that the jury found he committed, he certainly did not cover his tracks. Did he breach his fiduciary duty by not taking reasonable care to be sure that his client understood and ratified what he had done for her? No question that he did; was the failure an intentional fraud? The undisputed facts that he knew she would receive multiple notifications renders an inference that he intended to deceive her doubtful, at best. (See App. B, Trial trans. V.8, pp. 110-111).

Mr. Striano did testify that Mr. Liskov told him that he had success with other clients. Mr. Liskov denied that. Mr. Smith testified that Mr. Liskov did not represent himself to be an expert FOREX trading, and Mr. McLaughlin testified only that Mr. Liskov told him that he felt confident he could be successful. Mr. Striano aside, at worst the Division's witnesses merely testified to puffing, which cannot be the basis for a fraud finding, as Judge Young instructed the jury.

All the clients testified, and Mr. Liskov agreed, that he did not tell them of his prior unsuccessful track record. Admittedly, this fact adequately supports the jury verdict, and influenced Judge Young's decision on the remedies he ordered.

But you seem to be utterly deaf to your responsibility as a fiduciary. It was your duty to counsel these people, truly to counsel them, about the risks as well as the rewards. It was your duty to explain your own, your own poor trading record. The Jury expressly so found and properly found." Tr. 12/11/12, 3 1-32 (Division's App. Ex. D)

However, for the purpose of this proceeding, this Judge should weigh the facts that at Fidelity, Mr. Liskov was cautioned and taught that he should not discuss his own investments with clients. Ms. Zizza, a Fidelity Vice-President, confirmed that Fidelity considered it a bad practice for its representatives to discuss their investments with clients. This Judge should also consider the fact that the Division, although requested to do so by interested organizations, never required investment advisors to disclose their investment track records to clients. Thus, the conduct that most likely was the basis of the jury verdict was, as Judge Young indicated, omitting to “explain your own poor trading record” to his clients.

The Division argues in its brief that the jury found that the Respondent’s violations were “not isolated, but recurring.” It did not. The jury verdict slip is silent on this point. The Division’s assertion is inconsistent with the theory of its case that it successfully urged the jury to accept. Its counsel argued to the Jury,

Trial Transcript vol. 9, p. 51

11 For eight days -- at the beginning of this trial we
12 told you this case was going to be about an abuse of trust.
13 And now you got to hear five clients come in and tell you
14 how that trust was abused. It was abused through lies,
15 through material misrepresentations, omissions, because he
16 as a fiduciary had a duty to provide them with material
17 facts and to avoid them being misled.
18 This is his responsibility to make sure
19 they're not misled, and through a scheme to defraud. And
20 what does that scheme look like? It was a scheme that
21 started with the first investor, Mr. Bodi, and ended with
22 Mrs. Stott, August, excuse me, November of 2008 to August of
23 2010. It was to get investors in. It was to get
24 performance fees.

* * *

p. 55

21 The scheme here, the intent was to get as many
22 investors in in the short run, to get performance fees, and

23 not care about losses in the long run. And by the way,
24 that's why we care about losses. One, because he starts to
25 figure out that he's no good at this, but he keeps on doing

p. 56

1 it, which suggests that he had no, he didn't have the
2 interest of his clients but instead wanted to get those
3 performance fees. *And it indicates generally why the track*
4 *record was, should have been so important and disclosed to*
5 *investors.* (Emphasis supplied)

The theory of the division was that there was a single scheme to defraud five out of his 51 clients. Counsel's argument skillfully wove into this theory the argument that he breached his fiduciary duty because he did not have the interest of his clients. She then with her "time line" emphasized the large gains he accomplished for the clients and then lost because he negligently did not get out of the investments in time. She did not argue, much less prove, that the respondent engaged in repetitive fraudulent schemes. The Division having successfully persuaded the Court and Jury that the Respondent engaged in a single scheme to defraud is judicially estopped from now arguing that he engaged in recurring schemes.

"[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *State of New Hampshire v. State of Maine*, 532 U.S. 742 (2001)

In fashioning additional punishment, justice requires that this Judge recognize that this is not a case of a schemer stealing money, committing a fraud on the market selling junk stock masquerading as solid investments, creating a Ponzi Scheme or even betting against investments known to be poor risk touted to clients. We ask this Judge to also weigh the Respondent's admittedly wrongful breach of his fiduciary duties of due care and non-disclosure against the

conduct of certain well known large concerns whose fraud contributed to the Great Recession and whose managers or executives personally were never sanctioned.

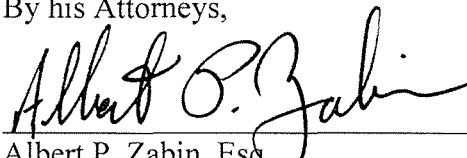
Mr. Liskov freely admitted, on the stand and at the remedy hearing, before Judge Young presented his prepared remarks, that he did not fulfill his fiduciary responsibilities. (Division's App. Ex. D Tr. 12/11/12, 29). Throughout the trial and his deposition, he has been candid and truthful, even when, his testimony was harmful. In situations, which could have been one witness's word against another, he has freely given testimony about what said or failed to say. The Division and the Court have never said otherwise.

THE APPROPRIATE REMEDY

The Respondent, fully recognizes that there was adequate evidence to support the verdict, as Judge Young expounded, and that the penalties and disgorgement orders cannot be lessened. He testified and told the Judge at the remedy hearing that he recognizes he failed in his duties as a fiduciary. The respondent throughout this litigation has never taken the position that his conduct was not a breach of his fiduciary duty due care. He has said and believes that he had no intention to mislead or deceive these clients. It is clear that these five clients thought that he was competent to trade FOREX and, regardless of his intent; they did not know of his poor trading record. Therein lies the fraud charged and found in this case. It should be significant that the Securities Exchange Commission, even when urged to require investment advisors to inform clients of their track records, declined to do so. Compared to most of the frauds that the country has seen, this is somewhere low on the scale of egregiousness. The conduct at issue involved five of 51 clients and has been Mr. Liskov's only brush with the law.

The factors the Judge should weigh, set out in the *Steadman* case that the Division has cited, should be applied with common sense and proportionality. The respondent ask that this Court either not order a bar from the entire financial industry, but limit the bar to work where he could handle other people's money (such as work bringing him in contact with clients as an advisor, a financial planner, a trader for clients, or a broker) and/or limit its time to five years or less. The punishment that the Courts have ordered and the fallout from this action has put Mr. Liskov and his family - a wife and three children - under a crushing financial burden. The publicity that this relatively small case has engendered has accomplished the deterrence function of punishment. What public interest would now be served by a bar that by its breadth and length makes it virtually impossible for him to shed that burden and make recompense to his clients?

Respondent,
By his Attorneys,



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DATED: March 7, 2013



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U.S. Securities and Exchange Commission

U.S. Securities and Exchange Commission

Litigation Release No. 22546 / November 27, 2012

Securities and Exchange Commission v. EagleEye Asset Management, LLC and Jeffrey A. Liskov (United States District Court for the District of Massachusetts, Civil Action No. 11-CV-11576)

Jury Returns Verdict of Liability Against Massachusetts Investment Adviser and his Advisory Firm

The Securities and Exchange Commission announced that, on November 26, 2012, a federal court jury in Boston, Massachusetts returned a verdict of securities fraud liability against registered investment adviser EagleEye Asset Management, LLC, and its sole principal, Jeffrey A. Liskov, both of Plymouth, MA, in connection their fraudulent conduct toward advisory clients. The trial was presided over by U.S. District Court Judge William G. Young.

In its complaint, the Commission alleged that, between at least November 2008 and August 2010, Liskov made material misrepresentations to at least six advisory clients to induce them to liquidate investments in securities and instead invest the proceeds in foreign currency exchange ("forex") trading. The forex investments, which were not suitable for older clients with conservative investment goals, resulted in steep losses for clients, totaling nearly \$4 million, but EagleEye and Liskov came away with over \$300,000 in performance fees, in addition to other management fees they collected from clients. Liskov's strategy was to generate temporary profits on client forex investments to enable him to collect performance fees, after which client investments invariably would sharply decline in value. According to the Commission's complaint, Liskov made material misrepresentations or failed to disclose material information to clients concerning the nature of forex investments, the risks involved, and his poor track record in forex trading for himself and other clients. The Commission's complaint further alleged that, in the case of two clients, without their knowledge or consent, Liskov liquidated securities in their brokerage accounts and transferred the proceeds to their forex trading accounts where he lost nearly all client funds, but not before first collecting performance fees for EagleEye (and ultimately himself) on short-lived profits in the clients' forex accounts. The complaint alleged that Liskov accomplished the unauthorized transfers by doctoring asset transfer forms. On several occasions, Liskov took old forms signed by the clients and used "white out" correction fluid to change dates, asset transfer amounts, and other data. Liskov also used similar tactics to open multiple forex trading accounts in the name of one client, thereby maximizing his ability to earn performance fees for EagleEye (and ultimately himself) on the client's investments, all without disclosing this to the client or obtaining the client's consent. The Commission alleged that, as a result of this conduct, EagleEye and Liskov violated Section 10(b) of the Securities Exchange Act of 1934

and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The Commission also alleged that EagleEye failed to maintain certain books and records required of investment advisers in violation of Section 204 of the Advisers Act and Rule 204-2 thereunder, and that Liskov aided and abetted EagleEye's violations of these provisions.

After an eight day trial, the jury deliberated for approximately four hours before rendering its verdict of liability against Liskov and EagleEye under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as to four clients and under Section 206(1) of the Advisers Act as to five clients. The Court will decide the Commission's claims under Section 204 of the Advisers Act and Rule 204-2 thereunder and will hold a hearing on the Commission's request for injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest thereon, and the imposition of a monetary penalty against both EagleEye and Liskov, based on the jury's verdict. The case was tried by Deena Bernstein and Naomi Sevilla of the Commission's Boston Regional Office.

For further information see [Litigation Release No. 22086](#) (September 8, 2011).

<http://www.sec.gov/litigation/litreleases/2012/lr22546.htm>

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Modified: 11/27/2012



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U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 22570 / December 14, 2012

Securities and Exchange Commission v. EagleEye Asset Management, LLC and Jeffrey A. Liskov, United States District Court for the District of Massachusetts, Civil Action No. 11-CV-11576

Court Enters Final Judgment Against Massachusetts Investment Adviser and its Principal, Orders Payment of Over \$1.7 Million in Illicit Gains and Penalties

The Securities and Exchange Commission announced that, on December 12, 2012, a federal judge in Boston, Massachusetts entered a final judgment against registered investment adviser EagleEye Asset Management, LLC, and its sole principal, Jeffrey A. Liskov, both of Plymouth, Massachusetts, in an action the Commission previously filed against them. The Commission's action alleged that the defendants defrauded advisory clients concerning foreign currency exchange ("forex") trading.

On November 26, 2012, after an eight-day trial, a federal jury found that EagleEye and Liskov violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Section 206(1) of the Investment Advisers Act of 1940. After a judicial hearing on remedies, Judge William G. Young also found violations by EagleEye and Liskov of Section 204 of the Advisers Act and Rule 204-2 thereunder, concerning their obligation to maintain true, accurate, and current certain books and records relating to EagleEye's investment advisory business. The court ordered that EagleEye and Liskov are permanently enjoined from future violations of the foregoing provisions of the securities laws. The court further ordered EagleEye and Liskov to pay, jointly and severally, disgorgement of their ill-gotten gains in the amount of \$301,502.26, plus pre-judgment interest on that amount of \$29,603.59. The court also ordered EagleEye and Liskov each to pay a civil penalty of \$725,000.

In its complaint, filed on September 8, 2011, the Commission alleged that, between at least November 2008 and August 2010, Liskov made material misrepresentations to several advisory clients to induce them to liquidate investments in securities and instead invest the proceeds in forex trading. The forex investments, which were not suitable for older clients with conservative investment goals, resulted in steep losses for clients, totaling nearly \$4 million, but EagleEye and Liskov came away with over \$300,000 in performance fees, in addition to other management fees they collected from clients. Liskov's strategy was to generate temporary profits on client forex investments to enable him to collect performance fees, after which client forex investments invariably would sharply decline in value.

According to the Commission's complaint, Liskov made material misrepresentations or failed to disclose material information to clients concerning the nature of forex investments, the risks involved, and his poor track record in forex trading for himself and other clients. The Commission's complaint further alleged that, in the case of two clients, without their knowledge or consent, Liskov liquidated securities in their brokerage accounts and transferred the proceeds to their forex trading accounts where he lost nearly all client funds, but not before first collecting performance fees for EagleEye (and ultimately himself) on short-lived profits in the clients' forex accounts. The complaint alleged that Liskov accomplished the unauthorized transfers by doctoring asset transfer forms. On several occasions, Liskov took old forms signed by the clients and used "white out" correction fluid to change dates, asset transfer amounts, and other data. Liskov also used similar tactics to open multiple forex trading accounts in the name of one client, thereby maximizing his ability to earn performance fees for EagleEye (and ultimately himself) on the client's investments, all without disclosing this to the client or obtaining the client's consent.

The Commission alleged that, as a result of this conduct, EagleEye and Liskov violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Advisers Act. The Commission also alleged that EagleEye failed to maintain certain books and records required of investment advisers in violation of Section 204 of the Advisers Act and Rule 204-2 thereunder, and that Liskov aided and abetted EagleEye's violations of these provisions.

The Commission acknowledges the assistance of Secretary of the Commonwealth of Massachusetts William F. Galvin's Securities Division and the Commodity Futures Trading Commission, both of which filed related cases against the defendants in September 2011.

For further information see Litigation Release Nos. 22086 (September 8, 2011) and 22546 (November 27, 2012).

<http://www.sec.gov/litigation/litreleases/2012/lr22570.htm>

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U.S. Securities and Exchange Commission

U.S. Securities and Exchange Commission

Litigation Release No. 22086 / September 8, 2011

Securities and Exchange Commission v. EagleEye Asset Management, LLC and Jeffrey A. Liskov (United States District Court for the District of Massachusetts, Civil Action No. 11-CV-11576)

Commission Sues Massachusetts Investment Adviser For Fraudulently Inducing Clients to Invest in Forex, Causing Investor Losses of Nearly \$4 Million While Adviser Earned Hefty Fees

The Securities and Exchange Commission announced that, on September 8, 2011, it filed a civil injunctive action in federal district court in Massachusetts against registered investment adviser EagleEye Asset Management, LLC, and its sole principal, Jeffrey A. Liskov, both of Plymouth, MA, in connection their fraudulent conduct toward advisory clients.

In its complaint, the Commission alleges that, between at least April 2008 and August 2010, Liskov made material misrepresentations to nearly a dozen advisory clients to induce them to liquidate investments in securities and instead invest the proceeds in foreign currency exchange ("forex") trading. These investments, which were not suitable for older clients with conservative investment goals, resulted in steep losses for clients, totaling nearly \$4 million, but EagleEye and Liskov came away with over \$300,000 in performance fees on these investments alone, in addition to other management fees they collected from clients. Liskov's strategy was to generate temporary profits on client forex investments to enable him to collect performance fees, after which client investments invariably would sharply decline in value. According to the Commission's complaint, Liskov's material misrepresentations to clients concerned the nature of forex investments, the risks involved, and his expertise and track record in forex trading. As to some clients, Liskov did not explain what forex trading was at all. As to other clients, Liskov downplayed the risks of forex investments. Liskov also falsely told several clients that he had had prior success in forex trading, when in fact he had lost substantial sums of his own or other clients' money in forex trading when he made such statements. The Commission's complaint further alleges that, in the case of two clients, without their knowledge or consent, Liskov liquidated securities in their brokerage accounts and transferred the proceeds to their forex trading accounts where he lost nearly all client funds, but not before first collecting performance fees for EagleEye (and ultimately himself) on short-lived profits in the clients' forex accounts. The complaint alleges that Liskov accomplished the unauthorized transfers by doctoring asset transfer forms. On several occasions, Liskov took old forms signed by the clients and used "white out" correction fluid to change dates, asset transfer amounts, and other data. Liskov also used similar tactics to open multiple forex trading accounts in the name of one client, thereby maximizing his ability to earn

performance fees for EagleEye (and ultimately himself) on the client's investments, all without disclosing this to the client or obtaining the client's consent.

The Commission's complaint alleges that, by the foregoing conduct, EagleEye and Liskov violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The Commission further alleges that EagleEye failed to maintain certain books and records required of investment advisers in violation of Section 204 of the Advisers Act and Rule 204-2(a) thereunder, and that Liskov aided and abetted EagleEye's violations of these provisions. The Commission seeks a permanent injunction, disgorgement of ill-gotten gains plus prejudgment interest thereon, and the imposition of a monetary penalty against both EagleEye and Liskov.

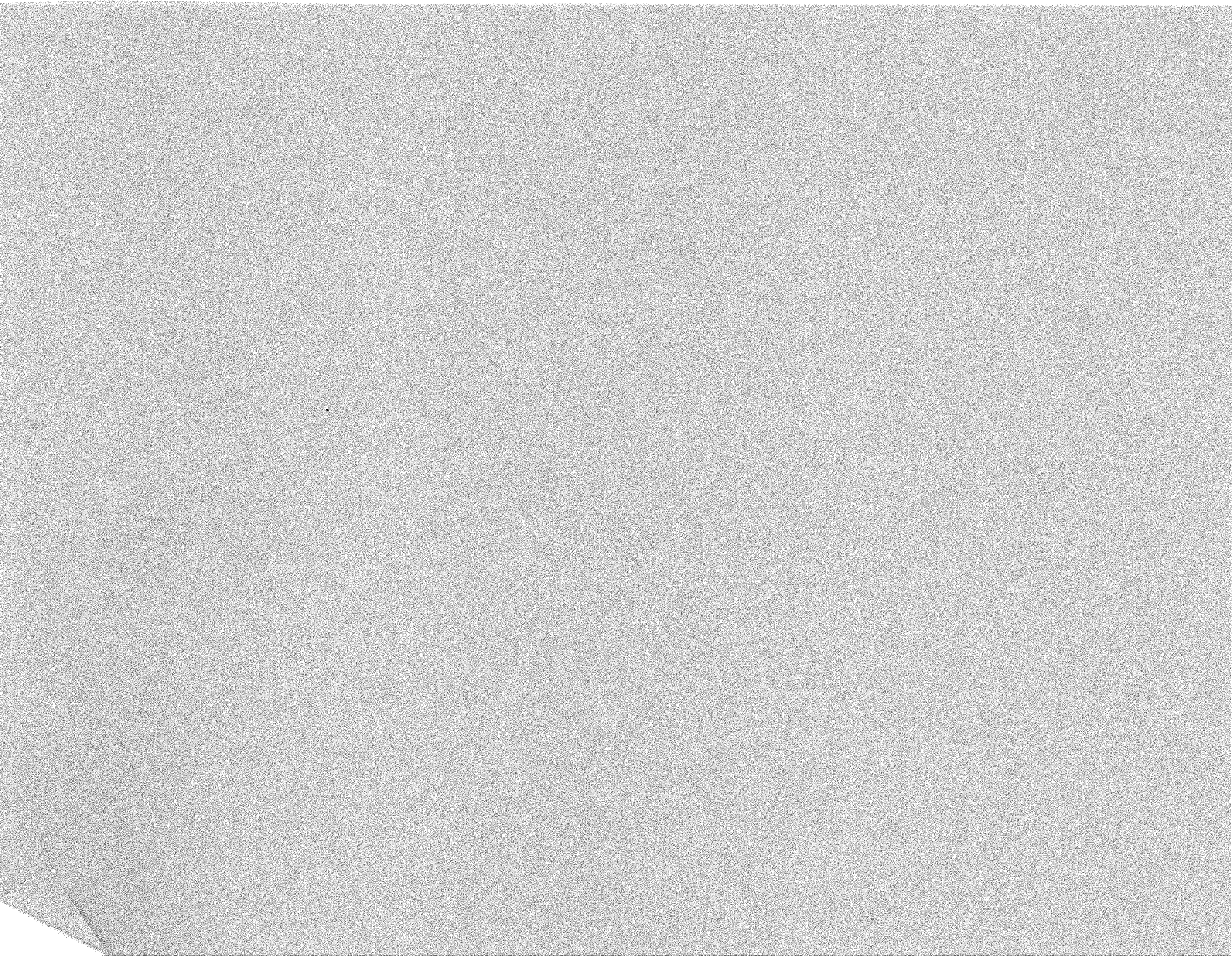
The Commission acknowledges the assistance of the Commodity Futures Trading Commission and Secretary of the Commonwealth of Massachusetts William F. Galvin, both of whom today filed related cases.

✶ [SEC Complaint](#)

<http://www.sec.gov/litigation/litreleases/2011/lr22086.htm>

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Modified: 09/08/2011



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Nov 27, 2012, 2:11pm EST

Jury: Mass. asset manager tricked seniors into into risky forex investments



Matthew L. Brown

Reporter- *Boston Business Journal*

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A Plymouth asset manager accused of using White-Out to snow clients out of more than \$300,000 in fees has been found liable for securities fraud by a Boston jury.

The U.S. Securities and Exchange Commission accused Jeffrey A. Liskov and his firm, EagleEye Asset Management LLC, of encouraging six "older" clients to liquidate investments in securities and to invest the proceeds in foreign currency exchange (forex) trading between 2008 and 2010.

The forex investments lost nearly \$4 million, but brought Liskov, EagleEye's sole principal, more than \$300,000 in performance fees, the SEC argued in a civil action.

The SEC alleged that Liskov used "White-Out" correction fluid to change dates, transfer amounts and other information on asset transfer forms previously signed by two clients.

With the manipulated forms, Liskov liquidated securities and brokerage accounts without the clients' knowledge and transferred the proceeds to forex trading accounts, where nearly all the clients' money was lost, but not before he collected performance fees.

After an eight-day trial, a U.S. District Court jury delivered a verdict of liability under the Exchange Act regarding four of the clients, and the Advisers Act regarding five of the clients, Monday.

The court is yet to decide on Liskov's liability under one aspect of the Advisers Act, and is expected to schedule a hearing on Liskov's disgorgement of money he took from the clients, as well as a fine, according to the SEC's Boston regional office.

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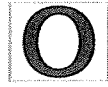
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Jury returns liability verdict against Plymouth investment adviser

Submitted by [Maggie Kulbokas](#) on Wed, 12/05/2012 - 1:14pm [News](#)

EagleEye Asset Management LLC and Jeffrey A. Liskov accused of fraudulent conduct



n November 26, the US Securities and Exchange Commission announced that a federal court jury in Boston returned a verdict of securities fraud liability against EagleEye Asset Management LLC and its sole principal, Jeffrey A. Liskov of Plymouth.

The commission alleged that between November 2008 and August 2010, Liskov made material misrepresentations to at least six advisory clients to induce them to liquidate investments in securities and instead invest the proceeds in foreign currency exchange (forex) trading.

Forex investments, according to the commission, are not suitable for older clients with conservative investment goals. The investment resulted in a loss of approximately \$4 million for the clients, although EagleEye, and in turn Liskov, made over \$300,000 in performance fees plus additional management fees paid by his clients.

Further, the commission charged that Liskov made "material misrepresentations" or failed to disclose material information to his clients regarding the risks in forex investing and Liskov's "poor track record" as pertained to previous forex trading.

Liskov is also alleged to have liquidated securities for at least two clients without their knowledge using doctored transfer forms. During such transactions, Liskov reportedly lost nearly all the clients' money, but only after collecting his performance fees through EagleEye.

The trial lasted eight days and the jury took only four hours to deliberate and render a verdict of liability.

The court will decide whether Liskov is to pay back funds (ill-gotten gains) as well as any additional penalties that may be assessed.

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U.S. Securities and Exchange Commission

Litigation Release No. 22086 / September 8, 2011...

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U.S. Securities and Exchange Commission

Litigation Release No. 22086 / September 8, 2011

Securities and Exchange Commission v. EagleEye Asset Management, LL...

Commission Sues Massachusetts Investment Adviser For Fraudulently Inducing Clients to Invest in Forex, Causing Investor Losses of Nearly \$4 Million While Adviser Earned Hefty Fees

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CFTC Charges Massachusetts Man Jeffrey Liskov and His Company, Eagl...

by the CFTC

The U.S. Commodity Futures Trading Commission (CFTC) filed a civil complaint charging Jeffrey Liskov and his company, EagleEye Asset Management, LLC (EEAM), both of Plymouth, Mass., with cheating and defrauding at least one customer in the United States of over \$3 million of retirement funds while trading off-exchange foreign currency contracts (forex) on the customer's behalf.

EagleEye targeted over clients' losses

By Greg Turner at Boston Herald

State and federal regulators yesterday slammed a Plymouth money manager for making "misrepresentations" about foreign currency exchange investments that allegedly cost his clients \$4 million.

Secretary of State William Galvin's office filed an administrative complaint against Jeffrey A. Liskov, 40, of Plymouth and his home-based EagleEye Asset Management, claiming he failed to disclose the high risks of "forex" trading.

Liskov was also hit with lawsuits filed by the U.S. Securities and Exchange Commission and Commodity Futures Trading Commission.

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FEBRUARY 12, 2013

Securities Fraud Litigation Roundup: Former Hedge Fund Exec Admits to \$1M Investment Fraud, SEC Files Penny Stock Scam Case & Class Action Claims Against Contact Lens Maker are Dismissed

Ex-Hedge Fund Exec Pleads Guilty to \$1M Investment Fraud

In the U.S. District Court for the Southern District of New York, ex-hedge fund principal Berton Hochfeld pleaded guilty to wire fraud and securities charges over his alleged role in an investment scam that bilked investors of over \$1M. He had been the organizer of limited liability Hochfield Capital, the general partner of Heppelwhite Fund LLP, which was set up to invest in publicly traded securities.

According to prosecutors, Hochfeld issued false representations to investors about the investments they made while misappropriating their money. He also is accused of taking money from Heppelwhite. Hochfeld will pay restitution and forfeit illegal profits. He will be sentenced this summer.

Securities and Exchange Commission Files Penny Stock Scam Case

The SEC is suing 12 entities and four individuals for allegedly running a penny stock scam that involved the acquisition of unregistered microcap company shares at discounted rates and then selling them while making false claims of registration exemptions per federal securities laws. Per the Commission, from 2007 to 2010 the defendants obtained unregistered shares in microcap companies at a discount of 30-60% by telling the companies that they wouldn't resell the shares right away and instead keep them for investments when, actually, they did sell them immediately while making fraudulent claims that the shares were exempt from registration under the 1933 Securities Act's Regulation D.

Actions allegedly taken included setting up virtual corporate presences in Texas and other states to make it appear as if compliance with claimed exemption was taking place and getting lawyer opinion letters that talked about the defendants' intention to

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keep the shares for investment purposes. They also are also accused of using these letters to get stock certificates sans restrictive legends so they could resell the shares right away.

Class Action Securities Claims Against Contact Lens Maker are Dismissed

The U.S. District Court for the Northern District of California has dismissed a [securities fraud class action lawsuit](#) against Cooper Cos. Inc. (COO) and some of its former and current executives. The complaint had accused them of making false and misleading statements about "Avaira" contact lenses, which were defective, to raise the company's share price. The executives also allegedly sold their company shares, making more than \$14.2 million in illicit benefits. The plaintiffs are claiming 1934 Securities Exchange Act violations.

Noting that the lawsuit did not satisfy the Private Securities Litigation Reform Act's pleading requirements and did not allege facts supporting that there was a "strong inference of scienter" or that the share price had become inflated due to omission or representation, the district court granted the defendants' motion to dismiss.

[Greenberg v. Cooper Cos. Inc. \(PDF\)](#)

[Securities and Exchange Commission v. Garber et al, Justia](#)

[United States v. Hochfeld \(pdf\)](#)

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[Texas Securities Criminal Case Against Oil and Gas Company Executive Can Proceed, Rules Fifth Circuit](#), Stockbroker Fraud Blog, February 6, 2013

[Reviving Antifraud Lawsuit Over Alleged Market-Timing Practices From Over Five Years Ago is Not the Answer, Say Ex-SEC Officials](#), Institutional Investor Securities Fraud, December 22, 2012

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JANUARY 5, 2013

[SEC Roundup: Massachusetts Investment Adviser Gets \\$1.78M Judgment and Allianz to Pay \\$12.3M to Settle Foreign Corrupt Practices Act Lawsuit](#)

Massachusetts Investment Adviser Gets \$1.78M Judgment

In a final judgment, the U.S. District Court for the District of Massachusetts says that EagleEye Asset Management LLC and its principal Jeffrey A. Liskov must pay a \$1.78M

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judgment for using a foreign currency exchange trading scam to defraud clients. The Securities and Exchange Commission contends that Liskov fraudulently got several of his investment advisory clients to liquidate securities investments and place the money in forex trading. While EagleEye and Liskov made about \$300,000 in performance fees, their clients allegedly lost \$4M.

Liskov is accused of perpetuating the investment adviser fraud by issuing material misrepresentations about forex investments, their risks, and his track record. Also per the SEC's complaint, Liskov more than once took old forms that advisory clients had signed and changed the dates, asset transfer amounts, and other information, and, without their knowledge, opened forex trading accounts.

Allianz to Pay \$12.3M to Settle Foreign Corrupt Practices Act Lawsuit

Allianz SE, a German insurance firm, has consented to pay \$12.3M to settle SEC administrative allegations that committed Foreign Corrupt Practices Act violations by issuing improper payments to Indonesian officials. Allianz is settling the case without denying or admitting to the allegations.

The Commission contends that over a seven-year period the insurer's Indonesian subsidiary paid about \$650,000 to employees of entities that were owned by the state and received approximately 295 insurance contracts—eventually leading to \$5.3M in profits—as a result. The agency says that even after Allianz received two complaints about possible FCPA violations and discovered that company employees had a special fund for making bribes, the allegedly illicit payments continued, and in some instances, were disguised so as not to be detected.

Stockbroker Fraud

If you suspect that you lost money because of securities fraud, please contact Shepherd Smith Edwards and Kantas, LTD, LLP today. Our stockbroker fraud lawyers have successfully represented thousands of institutional and individual investors.

SEC Charges Allianz SE With FCPA Violations, InsuranceNetNews, December 17, 2012

Court Enters Final Judgment Against Massachusetts Investment Adviser and its Principal, Orders Payment of Over \$1.7 Million in Illicit Gains and Penalties, SEC, December 14, 2012

Spotlight on Foreign Corrupt Practices Act

More Blog Posts:

SEC Intends to Examine 25% of Investment Advisers That Had To Register, Per Dodd-Frank Act, by End of 2014, Stockbroker Fraud Blog, December 26, 2012

Clearing House Association Wants Greater Protections for Clearing Members, Institutional Investor Securities Blog, December 31, 2012

SEC Inquiring About Wisconsin School Districts Failed \$200 Million CDO Investments Made Through Stifel Nicolaus and Royal Bank of Canada Subsidiaries, Stockbroker Fraud Blog, June 11, 2010

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For further information on this announcement, see — [SEC.gov Updates: Litigation Releases](#)

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PatriotLedger.com

Plymouth financial adviser accused of defrauding clients

By Steve Adams

The Patriot Ledger

Posted Sep 09, 2011 @ 01:51 AM

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BOSTON — A Plymouth investment adviser defrauded clients by engaging in high-risk without their knowledge, Secretary of State William Galvin alleged.

Galvin's office filed administrative complaints against Jeffrey Liskov, 40, owner of Eagle Management of Plymouth, on Thursday.

At least one customer was defrauded of more than \$3 million in retirement funds, according to a complaint filed by the Washington, D.C.-based U.S. Commodity Futures Trading Commission.

Liskov registered his company with the state in 2008, the complaint states, and had more than \$3 million under management in early 2010.

From 2008 through 2010, Liskov persuaded several clients to open foreign exchange trading accounts at an online dealer under his management.

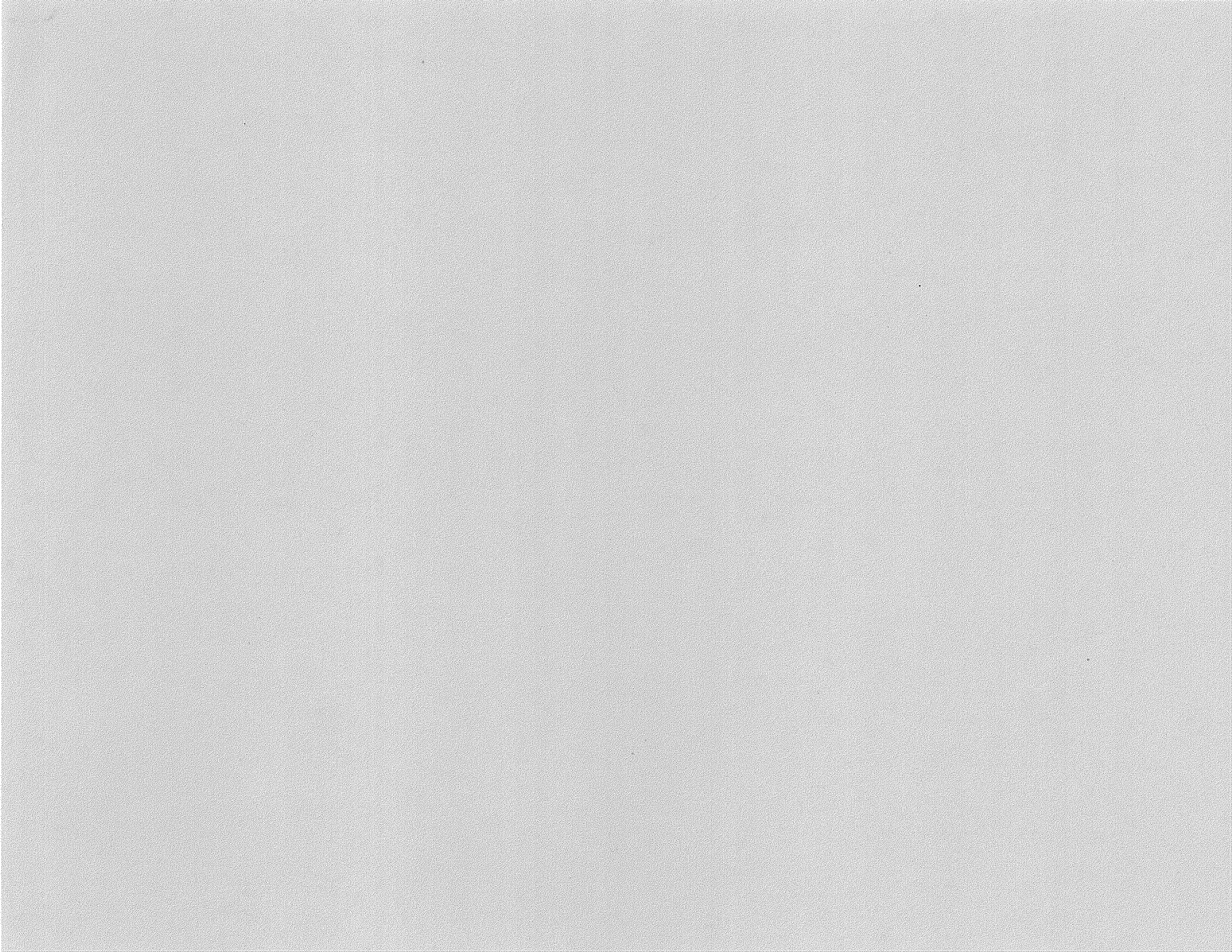
Despite losing substantial sums of his own money in foreign currency trading, Liskov told clients that they had not authorized, in some cases using whiteout correction fluid to conceal the losses, Galvin said.

Galvin seeks to revoke Liskov's registration as an investment adviser and to repay all clients for the alleged scheme.

A phone number listed for Liskov's company was disconnected Thursday. A call placed to the number was not immediately returned.

Steve Adams may be reached at sadams@ledger.com.

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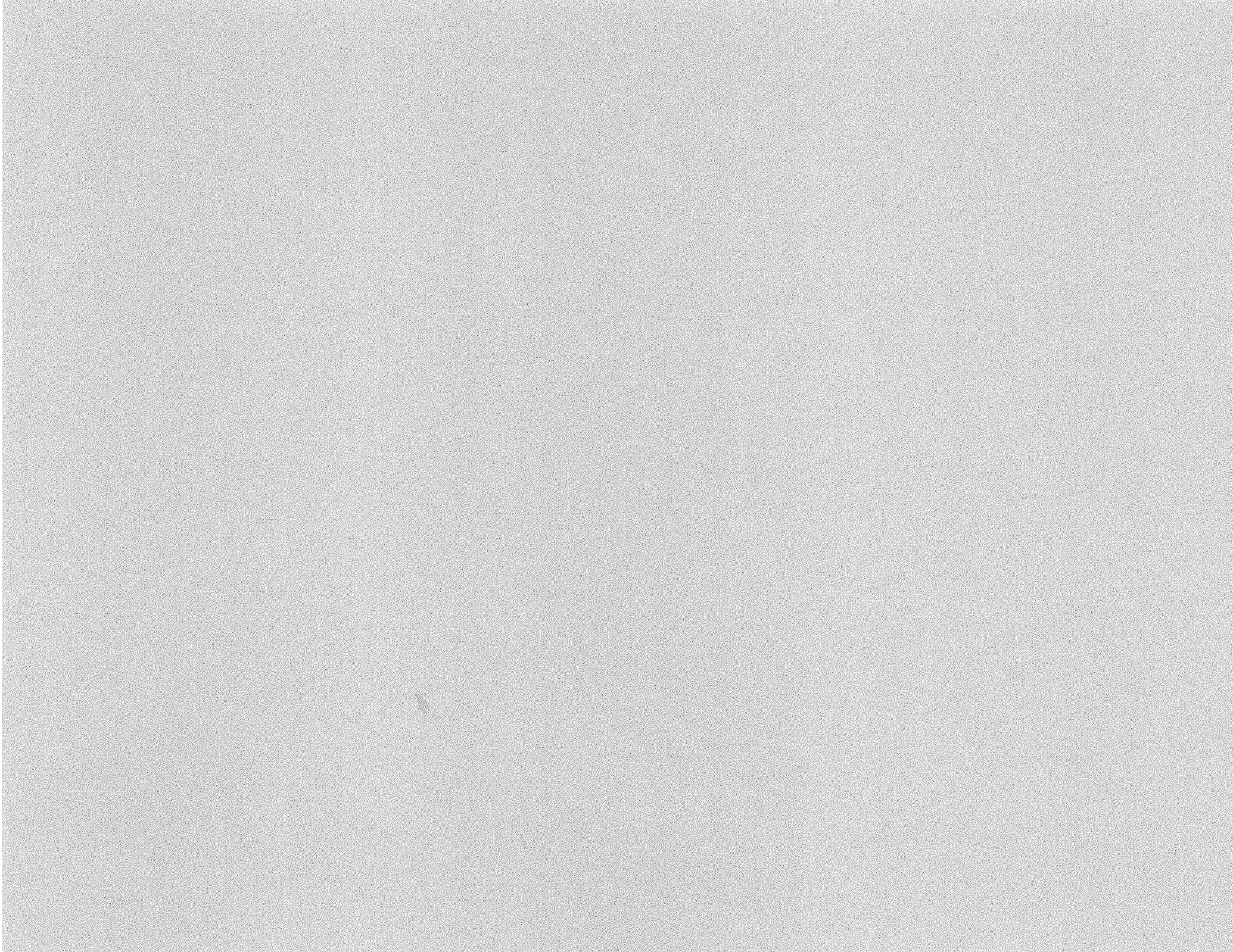
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SEC Enforcement Activity Round-Up

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Below are updates on notable SEC enforcement activity from the week of November 26-30, 2012:

“White-Out” Firm Found Guilty

Jeffrey Liskov and his firm, EagleEye Asset Management, LLC were found guilty of securities fraud by a jury in Boston. The Plymouth, MA firm was found guilty of misleading investors by misrepresenting the risks associated with investments in the foreign currency exchange (“forex”) market.

The Commission alleged that Liskov and EagleEye persuaded “older” clients to shift investments from low-risk securities into high-risk forex positions based on misleading information. Despite racking up huge losses for the clients, Liskov earned over \$300,000 in performance fees. Among the allegations were that Liskov used “white-out” to change names and dates on forms in order to, among other things, fraudulently transfer client assets into forex trading accounts.

After four hours of deliberation, the jury found Liskov and EagleEye liable for violations of Section 10(b) of the Exchange Act, Rule 10b-5, and the Advisers Act.

For more, read the SEC [Release](#).

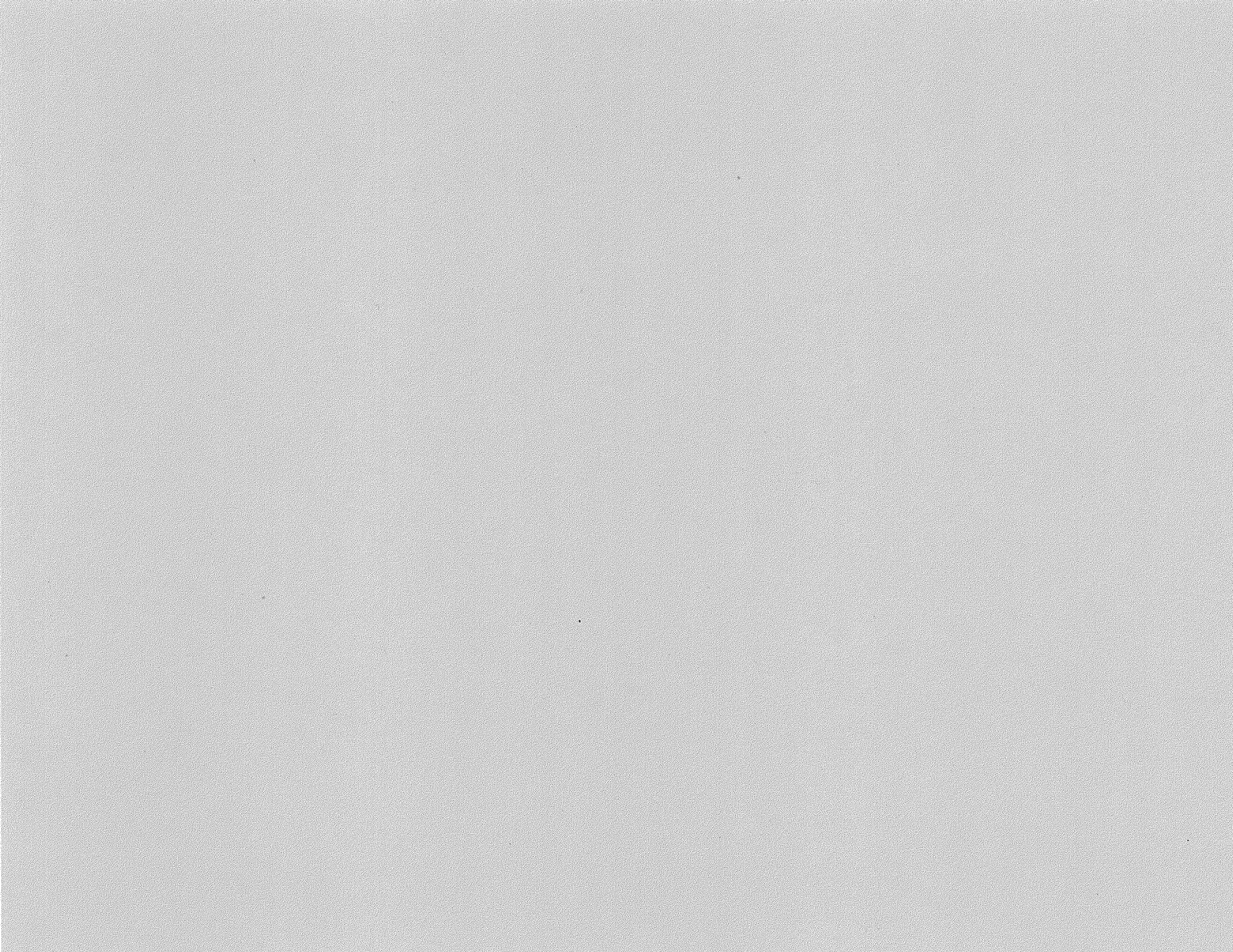
Insider Trading: Oil Company CEO Charged

Former CEO of Denver-based oil company Delta Petroleum Corporation was charged with insider trading. In the run-up to California-based investment firm Tracinda taking a 35% stake in Delta, former CEO Roger Parker tipped a close friend, who in turn tipped friends and family, according to the SEC complaint. Delta’s stock rose 20% in value once the Tracinda investment was announced. The complaint also alleges Parker provided early insights into a positive earnings report. The SEC obtained emails and phone records in connection with the alleged tipping.

For more, read the SEC [Release](#).

Misleading Investors: Fund Director Failed to Disclose Fund Was Failing

Joseph Hennessy and his investment advising firm Resources Planning Group defrauded investors by failing to inform that the fund was failing. In its complaint the SEC alleges that Hennessy raised \$1.3 million in funds by promising high returns and misrepresenting that the fund was viable. He then used the funds to repay promissory notes to earlier investors. Additional charges include misappropriating client funds and forging documents in order to pay past debts.



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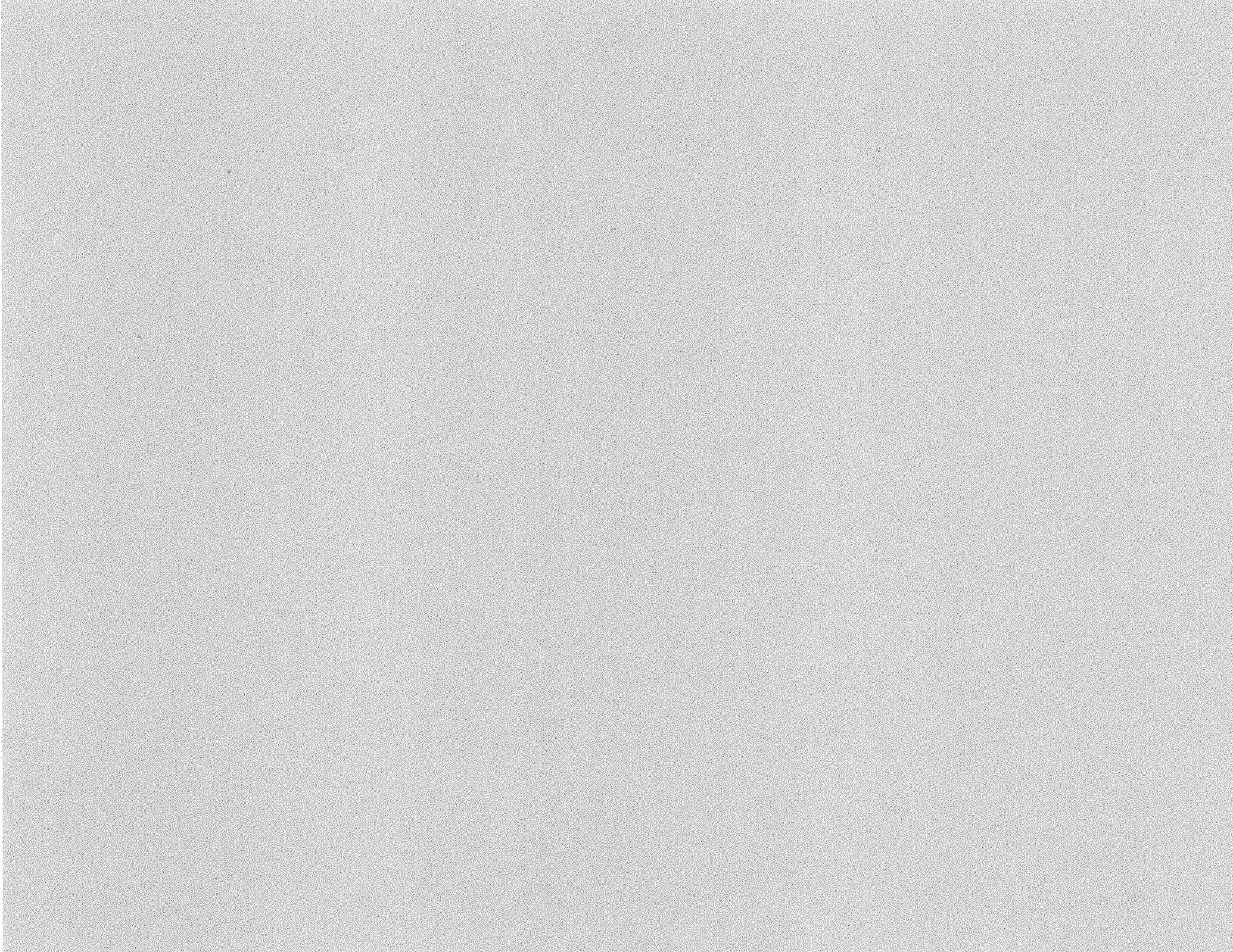
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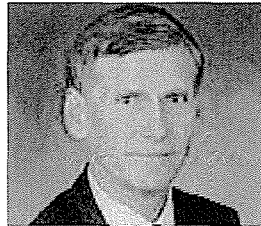
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The Week In Securities Litigation: SEC Chair Announces Resignation, SEC Preva

Posted by [Thomas O. Gorman](#)



This week SEC Chairman Mary Schapiro announced her resignation, and Commissioner Walter was designated as Chairman, effective after Ms. Schapiro indicated she will only remain as a member of the Commission for a limited period.

Beginning the week of Thanksgiving, the Commission prevailed in two market crisis cases. It also filed four new insider trading actions and

The Manhattan U.S. Attorney's Office continued to bring high profile cases against another former employee of SAC Capital. The Commission filed a parallel action speculation focused on possible charges against SAC Capital with a Wells Notice from the Commission.

The SEC

The Chairman: Mary L. Schapiro, one of the longest serving SEC Chairmen, became effective December 14, 2012. Ms. Schapiro has served through one of the most turbulent periods in the Commission's history. Taking office in January 2009 she was immediately faced with a series of scandals. The regulator was also faced with the task of rising to the task under Ms. Schapiro's leadership, the Commission's enforcement program in the history of the agency. Following the Dodd-Frank legislation, she led the Commission through an unprecedented period of legislation.

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SEC Enforcement: Litigated cases

Advisory fraud: SEC v. EagleEye Asset Management, LLC, Civil Action in which a jury returned a verdict in favor of the Commission and against EagleEye Management and its sole principal Jeffrey Liskov based on a scheme centered around a forex trading scheme. Between April 2008 and August 2011, Liskov made misrepresentations to a dozen clients, according to the Commission. He urged the clients to liquidate their securities holdings so the cash could be used to pay the fees. The trades resulted in about \$4 million in losses for the clients but generated fees. In some instances Mr. Liskov used a strategy which resulted in significant losses. Later, however, the positions would decline sharply in value. In the process, Liskov transferred their brokerage accounts without permission. He then transferred the funds to a company where virtually all of their money was lost. The transfers were facilitated by Liskov's company. The complaint alleged violations of Exchange Act Section 10(b) and 206(2) and 204. *See also* Lit. Rel. No. 22546 (Nov. 27, 2012).

Aiding & abetting: SEC v. Greenstone Holdings, Inc., Civil Action No. 11-04206 (S.D.N.Y. filed June 21, 2012). In part the Commission's motion for summary judgment, fining attorney Greenstone for aiding and abetting a fraud by issuing a false legal opinion. In its papers the Commission alleged that Greenstone authored a false legal opinion that was used by the firm to issue over \$10 million in notes. The opinion described notes, note holders and communications with Greenstone on a "best efforts" basis in fact. The Court concluded that Ms. Sourlis aided and abetted the fraud. The Court reserved ruling on the Securities Act Section 5 claim against Greenstone. The Court reserved ruling on the Securities Act Section 5 claim against Greenstone. The Court reserved ruling on the Securities Act Section 5 claim against Greenstone. The Court reserved ruling on the Securities Act Section 5 claim against Greenstone. The Commission plans to seek remedies. *See also* Lit. Rel. 22542 (Nov. 26, 2012).

Market crisis: SEC v. Steffelin, Civil Action No. 11-04206 (S.D.N.Y. filed June 21, 2012). Actions against Edward Steffelin, a Managing Director at GSCP (NJ) LLC, and another market crisis action against J.P. Morgan Securities, *SEC v. J.P. Morgan Securities*, Civil Action No. 11-04204 (S.D.N.Y. filed June 21, 2012). Both actions concern synthetic collateralized debt obligation known as Squared CDO 2007-2008. The complaint alleged misstatements in connection with the marketing of interests in the CDO. Magnetar Capital LLC. Mr. Steffelin's firm served as the portfolio manager. The complaint alleged that Steffelin's firm made misstatements in the marketing of interests in the CDO. The complaint appeared to detail an intentional fraud, fraud under Securities Act Sections 17(a)(2) & (3). J.P. Morgan settled the proceeding with prejudice.

SEC Enforcement: Filings and settlements

Weekly statistics: Over the last two weeks the Commission filed 9 civil proceedings (excluding tag-along-actions and 12(j) actions).



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Jury Returns Verdict of Liability Against Massachusetts Investment Adviser and his Advisory Firm

U.S. Securities and Exchange Commission

Litigation Release No. 22546 / November 27, 2012

Securities and Exchange Commission v. EagleEye Asset Management, LLC and Jeffrey A. Liskov (United States District Court for the District of Massachusetts, Civil Action No. 11-CV-11576)

Jury Returns Verdict of Liability Against Massachusetts Investment Adviser and his Advisory Firm

The Securities and Exchange Commission announced that, on November 26, 2012, a federal court jury in Boston, Massachusetts returned a verdict of securities fraud liability against registered investment adviser EagleEye Asset Management, LLC, and its sole principal, Jeffrey A. Liskov, both of Plymouth, MA, in connection their fraudulent conduct toward advisory clients. The trial was presided over by U.S. District Court Judge William G. Young.

In its complaint, the Commission alleged that, between at least November 2008 and August 2010, Liskov made material misrepresentations to at least six advisory clients to induce them to liquidate investments in securities and instead invest the proceeds in foreign currency exchange ("forex") trading. The forex investments, which were not suitable for older clients with conservative investment goals, resulted in steep losses for clients, totaling nearly \$4 million, but EagleEye and Liskov came away with over \$300,000 in performance fees, in addition to other management fees they collected from clients. Liskov's strategy was to generate temporary profits on client forex investments to enable him to collect performance fees, after which client investments invariably would sharply decline in value. According to the Commission's complaint, Liskov made material misrepresentations or failed to disclose material information to clients concerning the nature of forex investments, the risks involved, and his poor track record in forex trading for himself and other clients. The Commission's complaint further alleged that, in the case of two clients, without their knowledge or consent, Liskov liquidated securities in their brokerage accounts and transferred the proceeds to their forex trading accounts where he lost nearly all client funds, but not before first collecting performance fees for EagleEye (and ultimately himself) on short-lived profits in the clients' forex accounts. The complaint alleged that Liskov accomplished the unauthorized transfers by doctoring asset transfer forms. On several occasions, Liskov took old forms signed by the clients and used "white out" correction fluid to change dates, asset transfer amounts, and other data. Liskov also used similar tactics to open multiple forex trading accounts in the name of one client, thereby maximizing his ability to earn performance fees for EagleEye (and ultimately himself) on the client's investments, all without disclosing this to the client or obtaining the client's consent. The Commission alleged that, as a result of this conduct, EagleEye and Liskov violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The Commission also alleged that EagleEye failed to maintain certain books and records required of investment advisers in violation of Section 204 of the Advisers Act and Rule 204-2 thereunder, and that Liskov aided and abetted EagleEye's violations of these provisions.

After an eight day trial, the jury deliberated for approximately four hours before rendering its verdict of liability against Liskov and EagleEye under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder as to four clients and under Section 206(1) of the Advisers Act as to five clients. The Court will decide the Commission's claims under Section 204 of the Advisers Act and Rule 204-2 thereunder and will hold a hearing on the Commission's request for injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest thereon, and the imposition of a monetary penalty against both EagleEye and Liskov, based on the jury's verdict. The case was tried by Deena Bernstein and Naomi Sevilla of the Commission's Boston Regional Office.

For further information see Litigation Release No. 22086 (September 8, 2011).

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1 report for the month of November 2009 to November 30th 2009.

2 Do you see that?

3 A Yes, I do.

4 Q It shows a withdrawal of \$400,000, does it not?

5 A It says transfers between Fidelity accounts.

6 Q Yes.

7 A Which is confusing really.

8 Q Okay. Actually you're correct, and I stand corrected.

9 It shows a transfer from one account, a Fidelity account, to
10 another, right?

11 A Yes.

12 Q All right. Now, if we go back to 205, see the bottom
13 says: If you did not authorize this transaction or believe
14 this transaction was made in error please contact Fidelity
15 Investments immediately at 800-544-6666.

16 Did you call Fidelity about this wire confirmation?

17 A No, I did not.

18 Q I'm going to --

19 A I wish I did.

20 Q Did you call Mr. Liskov about it?

21 A I didn't notice it.

22 Q I'm sorry, did you call Mr. Liskov about it?

23 A No.

24 Q I show you another wire transfer confirmation dated
25 December 11th, 2009 for \$299,985. Do you see that?

1 A Yes, I do.

2 Q All right. And that has the same, has the same language
3 that if you did not authorize this transaction, et cetera?

4 A Yes.

5 Q Okay. Did you call Fidelity or Mr. Liskov about this
6 confirmation?

7 A No, I did not.

8 Q And if you will look at Exhibit 231, which was
9 Exhibit 28 at your deposition. We're looking now at the
10 investment report from Fidelity for December of 2009,
11 correct?

12 A Yes.

13 Q All right. Do you want to speak into the phone so
14 everyone -- into the phone. Into your --

15 A Yeah, I will.

16 Q I just want to move this a little bit for you, okay?

17 Is that in your way?

18 A Okay.

19 Q And this one does show a withdrawal of \$299,985, does it
20 not?

21 A Yes, it does.

22 Q Did you at any, did you at any time ask Mr. Liskov what
23 that withdrawal was about?

24 A No, I did not.

25 Q Okay. All right. Let's go through the -- we're now

1 looking at Exhibit 207 which is a transaction confirmation
2 for a wire on February 17th, 2010 in the amount of \$600,000.
3 It goes to the Bank of America.

4 Have I read that correctly?

5 A Yes.

6 Q And again, you did not contact Fidelity Investments
7 about this either telling him that the amount was wrong or
8 that this was unauthorized?

9 A No.

10 Q And if we, if we look at Exhibit 232, which is an
11 investment report from Fidelity for February of 2010, we see
12 that there's a transfer between Fidelity accounts of
13 \$600,000.

14 Do you see that?

15 A Yes, I do.

16 Q And if we look at -- and if we now look at another
17 Fidelity Investment report, which is Exhibit 233, we see a
18 withdrawal of \$600,000.

19 A Yes, I see that.

20 Q All right. Now, you never called Fidelity or Mr. Liskov
21 about the \$600,000 transfer and withdrawal, did you?

22 A No, I did not.

23 Q That's a duplicate.

24 And here is a transaction confirmation dated May
25 25th for \$400,000 to the Bank of America, and it's

1 Exhibit 208.

2 A Okay.

3 Q All right? And you received this?

4 A Apparently.

5 Q And you never told Fidelity this was unauthorized, did
6 you?

7 MS. BERNSTEIN: Objection.

8 THE COURT: No, assuming it's within the same
9 ambit, overruled.

10 Q Nor did you tell Fidelity that the amount was not
11 correct? That's true also, isn't it?

12 A That's true. Yes.

13 Q And you never called Mr. Liskov and asked him what was
14 happening with this withdrawal or the others; that's true
15 also, isn't it?

16 A You said I never called him. I did eventually call him.

17 Q All right. You didn't call him when you, when you
18 received the document, did you?

19 A No, when I opened them is when I called him.

20 Q Well, I'm going to -- trust me, I'm going to get to that
21 and I promise it will be before the break at 1:00.

22 And here's another confirmation, without going
23 through it word for word, the date is June 11th, 2010 and
24 this wire amount is a million dollars.

25 Do you see that?

1 A Yes, I do.

2 Q And at this time you never called Fidelity about this
3 confirmation, did you?

4 A Not at that time, no.

5 Q No. And that million dollars shows up on Exhibit 234
6 which is the Fidelity Investment report for the month of
7 June 2010. And you received that, did you not?

8 A Apparently.

9 Q Well, Fidelity was very good at getting confirmation --
10 confirmations, trade confirmations and monthly statements to
11 you, wasn't it?

12 MS. BERNSTEIN: Objection.

13 Q In your experience?

14 THE COURT: Sustained.

15 MR. ZABIN: Okay.

16 Q All right. Now, you have testified in your deposition,
17 and if you need to we'll look at it, that you did not read
18 these confirmations but instead put them in a packet and
19 left them on your desk, correct?

20 MS. BERNSTEIN: Objection.

21 THE COURT: No, no. Overruled.

22 A I was referring to a specific group that came in in that
23 period from, returning from Florida to notifying Fidelity,
24 notifying Jeff and all hell breaking loose. Yes, I kept
25 them in a packet. I hadn't opened them until I had come

1 home from Florida, and I don't know how many days later.

2 And I had a whole stack of them.

3 Q And these --

4 A And that's --

5 Q I'm sorry.

6 A And when I opened them that's when I said uh-oh, this
7 is -- but before that I thought I had hired Jeff to watch my
8 money. I didn't expect this to have ever happened.

9 Q Mrs. Stott, the only question that I asked you, I
10 thought, was that you had testified that, as you did today,
11 you received them, you did not open them, you kept them in a
12 packet on your desk from the first one to the last one.
13 That's -- let's just get that clear. That is what you have
14 testified to; is that right?

15 A Close to it. I don't think I had the first couple of
16 them. But I had most of them.

17 Q Right. And they came in envelopes that said
18 "Important," isn't that true?

19 A That's true.

20 Q Isn't it, isn't it -- wasn't it your practice to stay on
21 top of your investments?

22 MS. BERNSTEIN: Objection.

23 THE COURT: Sustained.

24 Q Was it not your practice to keep abreast of how, of your
25 portfolio?